

**FEDERAL ELECTION COMMISSION**  
**999 E Street, N.W.**  
**Washington, D.C. 20463**

**FIRST GENERAL COUNSEL'S REPORT**

MUR: 6101  
DATE COMPLAINT FILED: 10/21/2008  
DATE OF NOTIFICATION: 10/28/2008  
LAST RESPONSE RECEIVED: 02/24/2009  
DATE ACTIVATED: 01/06/2009

EXPIRATION OF SOL: 04/01/2011 and continuing

COMPLAINANT:

Howard Walter Herz

RESPONDENTS:

Heller for Congress and Elisabeth Ballinger, in her  
official capacity as treasurer<sup>1</sup>  
November Inc.  
Autumn Productions  
Foundations Inc. (n/k/a In Compliance Inc.)  
NI Operations

RELEVANT STATUTES:

2 U.S.C. § 441a(a)(1)  
2 U.S.C. § 441a(f)  
2 U.S.C. § 441b(a)  
11 C.F.R. § 100.55  
11 C.F.R. § 116.1  
11 C.F.R. § 116.2  
11 C.F.R. § 116.3

INTERNAL REPORTS CHECKED:

Disclosure Reports

FEDERAL AGENCIES CHECKED:

None

**I. INTRODUCTION**

This matter arises out of a complaint alleging that November Inc., Autumn Productions, Foundations Inc. (n/k/a In Compliance Inc.) ("Foundations"), and NI Operations made prohibited corporate contributions to Heller for Congress and Elisabeth Ballinger, in her official

<sup>1</sup> At the time of the alleged violation in this matter, the treasurer for Heller for Congress was Chrissie Hastic.

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1 capacity as treasurer ("the Committee"), by extending credit to the Committee that remained  
2 outstanding for long periods of time. In response to the complaint, the Committee asserts that no  
3 impermissible contributions occurred because there was no extension of credit. Based on  
4 available information indicating that the Committee owed in excess of \$250,000 to these vendors  
5 for over two years, we recommend that the Commission find reason to believe that Heller for  
6 Congress and Elisabeth Ballinger, in her official capacity as treasurer, violated  
7 2 U.S.C. §§ 441a(f) and/or 441b(a) by receiving excessive or prohibited corporate contributions.  
8 We also recommend that the Commission find reason to believe that November Inc. and  
9 Foundations made prohibited corporate contributions in violation of 2 U.S.C. § 441b(a).  
10 Because it is unclear whether Autumn Productions is incorporated, we recommend that the  
11 Commission find reason to believe that Autumn Productions made excessive or prohibited  
12 corporate contributions in violation of 2 U.S.C. §§ 441a(f) or 441b. For the reasons discussed  
13 below, we recommend that the Commission find no reason to believe that NI Operations violated  
14 2 U.S.C. § 441a(a)(1).

## 15 **II. FACTUAL BACKGROUND**

16 The complaint in this matter raises questions about the Committee's debts owed to four  
17 vendors.<sup>2</sup> The complainant asserts that November Inc., Autumn Productions, Foundations, and  
18 NI Operations provided goods or services to the Committee, and that the Committee failed to  
19 repay these entities. Complainant argues that these companies extended credit to the Committee  
20 outside the normal course of business because the Committee has "regularly and promptly paid  
21 for [other] services rendered" during both the 2006 and 2008 campaign cycles, and because it is

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<sup>2</sup> The Committee is the principal campaign committee for Dean Heller, who was elected to the U.S. House of Representatives for Nevada's Second Congressional District in 2006 and was reelected in 2008.

1 not the "usual or normal practice" for political consulting companies to allow debts to go unpaid  
2 for two years. Complaint at 2. The Complainant states that the credit extended to the Committee  
3 is not substantially similar to the credit extended to nonpolitical clients, because regional  
4 consulting firms do not "lend sums in excess of \$250,000 interest free for periods of over a year  
5 to non-political clients." *Id.* Finally, the Complainant alleges that November Inc., Autumn  
6 Productions, Foundations, and NI Operations are related entities, because Autumn Productions,  
7 Foundations, and NI Operations are listed under the same address on the Committee's FEC  
8 reports, and because another Nevada committee lists Autumn Productions at the same address as  
9 November Inc. on its FEC reports. *Id.* at 1.

10 In response, the Committee asserts that it "was billed in accordance with the usual and  
11 normal billing practice for all of their vendors." Committee Response at 2. The Committee  
12 asserts that it is not out of the ordinary for "political consultants to bill their clients for services  
13 after they are rendered, once actual costs are known," and "it is also not unusual for a candidate  
14 committee to take some time to address debt to vendors." *Id.* Further, the Committee argues  
15 that its reported debts are not extensions of credit because they "are not the result of any  
16 agreement between the committee and their creditors with respect to the payment of invoices."  
17 *Id.*; see 11 C.F.R. § 116.1(e). Finally, the Committee states that it "has not made any attempt to  
18 settle the debts for less than owed," and it made payments to November Inc. and NI Operations  
19 in late October and early November 2008. Committee Response at 3.

20 Foundations responded by stating that it was a registered corporation in Nevada from  
21 May 22, 2003, to March 14, 2007, at which time it formally changed its name to In Compliance  
22 Inc. Foundations Response at 1, 2. Foundations asserts that it is not the same entity as  
23 November Inc., and "neither November Inc. nor any of its principals have an ownership interest

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1 in Foundations Inc.” *Id.* at 2. However, according to Foundations’ response, November Inc.,  
2 Foundations, Autumn Productions, and NI Operations shared office space and a post office box  
3 during the time contemplated in the complaint, but November Inc. and Foundations “maintain  
4 separate bank accounts and do not commingle funds.” *Id.* Foundations also states that it was  
5 “solely owned and operated” by the Committee’s former treasurer, Chrissie Hastie. *Id.*  
6 Foundations’s response does not address the outstanding debt owed to it by the Committee.

7 The other respondents in this matter did not submit responses to the complaint.

8 **III. LEGAL ANALYSIS**

9 The issue presented in this case is whether November Inc., Autumn Productions,  
10 Foundations, and NI Operations made, and the Committee knowingly accepted, excessive or  
11 prohibited contributions in the form of extensions of credit to the Committee that have remained  
12 outstanding for more than two years. The Federal Election Act of 1971, as amended (“the Act”),  
13 prohibits contributions to a candidate or an authorized committee in excess of \$2,300 in  
14 connection with Federal elections, and it prohibits corporations (including commercial vendors)  
15 from making contributions or expenditures in connection with any election for Federal office.  
16 See 2 U.S.C. §§ 441a(a)(1) and 441b(a); 11 C.F.R. § 114.2. Similarly, the Act prohibits  
17 committees from knowingly accepting excessive or prohibited contributions. See 2 U.S.C.  
18 §§ 441a(a)(1) and 441(b). A “contribution” is defined as “any gift, subscription, loan, advance,  
19 or deposit of money or anything of value made by any person for the purpose of influencing any  
20 election.” 2 U.S.C. § 431(8)(A)(i). A “commercial vendor” is any person who provides goods or  
21 services to a candidate or political committee, and whose usual and normal business involves the  
22 sale, rental, lease, or provision of those goods or services. See 11 C.F.R. § 116.1(c).

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1       The extension of credit to a candidate's authorized political committee by a commercial  
2 vendor is considered a contribution unless the credit is extended in the ordinary course of the  
3 person's business, and the terms are substantially similar to extensions of credit to nonpolitical  
4 debtors of similar risk and size of obligation. *See* 11 C.F.R. § 100.55; 11 C.F.R. § 116.3(b). An  
5 extension of credit includes, but is not limited to: (1) any agreement between the creditor and  
6 political committee that full payment is not due until after the creditor provides goods or services  
7 to the political committee; (2) any agreement between the creditor and political committee that  
8 the political committee will have additional time to pay the creditor beyond the previously  
9 agreed-to due date; and (3) the failure of the political committee to make full payment to the  
10 creditor by a previously agreed-to due date. *See* 11 C.F.R. § 116.1(e). In assessing whether a  
11 commercial vendor extended credit in the ordinary course of business, and thus did not make a  
12 contribution, the Commission will consider: (1) whether the commercial vendor followed its  
13 established procedures and its past practice in approving the extension of credit; (2) whether the  
14 commercial vendor received prompt payment in full if it previously extended credit to the same  
15 candidate or political committee; and (3) whether the extension of credit conformed to the usual  
16 and normal practice in the commercial vendor's trade. *See* 11 C.F.R. § 116.3(c). A contribution  
17 also will result if a creditor fails to make a commercially reasonable attempt to collect the debt.  
18 *See* 11 C.F.R. § 100.55.

19       In past cases, the Commission has found reason to believe that a Committee has violated  
20 2 U.S.C. §§ 441a(f) and 441b(a) where the Committee failed to pay back credit extended by  
21 commercial vendors within a few months, as well as where respondents provided little or no  
22 information demonstrating that they made extensions of credit in the ordinary course of business.  
23 *See, e.g.,* MUR 5396 (Bauer for President 2000), America Direct, Inc. Factual and Legal

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1 Analysis (Commission found reason to believe where commercial vendor's invoices required  
2 payment on receipt or within 30 days, but five invoices totaling over \$108,000 were paid after  
3 four or five months, two invoices totaling over \$91,000 were paid after 171 and 231 days, and  
4 one invoice totaling \$57,884 was paid after 185 days, and where there was no information  
5 establishing that these extensions of credit were in the ordinary course of business); MUR 4803  
6 (Tierney for Congress), Goldman Associates Factual and Legal Analysis (Commission found  
7 reason to believe where there was no information that debt, which remained outstanding for  
8 years, was extended in the ordinary course of business, and where no information was provided  
9 that vendor attempted to collect the debt owed to it); MUR 5635 (Conservative Leadership  
10 Political Action Committee), Conservative Leadership Political Action Committee Factual and  
11 Legal Analysis (Commission found reason to believe where direct mail company, which used  
12 multiple sub-vendors, had extended credit to Committee and debt had remained outstanding for  
13 at least 24 months).

14 As discussed below, it appears that November Inc. and Foundations may have made  
15 prohibited contributions, and Autumn Productions may have made excessive or prohibited  
16 corporate contributions, by extending credit and failing to make commercially reasonable  
17 attempts to collect debts owed to them by the Committee. It does not appear that NI Operations  
18 made an excessive or prohibited contribution.

19 **A. November Inc.**

20 As a registered corporation in the State of Nevada specializing in "fundraising,  
21 government affairs, media, campaign, and project management," November Inc. appears to be a  
22 commercial vendor under the Commission's regulations. See 11 C.F.R. § 116.1(c); see also  
23 November Inc. Home, at <http://www.novemberinc.com> (last visited Mar. 30, 2009) (stating that

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1 November Inc.'s mission is "Building winning campaigns and successful relationships with  
2 business and political leaders across the country"). A Dun and Bradstreet research service report  
3 for the company states that November Inc. is a "political campaign organization" with annual  
4 sales of \$100,000. The Committee lists its debt to November Inc. as "consulting and fundraising  
5 services." *See* Schedule D, 2008 Post-General Report.

6 It appears that November Inc. extended credit to the Committee because it did not require  
7 full payment until after it rendered services to the Committee. *See* 11 C.F.R. § 116.1(e)(1); *see*  
8 *also* Attachment A. For at least two years, a significant portion of the Committee's debt to  
9 November Inc. has remained outstanding. From mid-2006 until the present, the Committee has  
10 owed November Inc. at least \$71,706.50. *See* Attachment A. This amount increased to \$92,390  
11 before the 2006 general election, and again to \$117,862.65 in the Committee's 2006 Post-  
12 General Report filing. *Id.* The amount then fell by \$1,106.50 in the beginning of 2007 to  
13 \$116,757.60. *Id.* However, this amount remained constant from early 2007 until soon after the  
14 instant complaint was filed, when the Committee made two disbursements of \$4,200 each on  
15 October 31, 2008 and November 4, 2008, bringing the total owed to November Inc. to  
16 \$108,356.60 as of December 31, 2008. *Id.* Despite the amount of money that remained  
17 outstanding for the company's consulting services, the Committee has made disbursements to  
18 November Inc. for minor expenses. *See, e.g.,* 2008 October Quarterly Report (Committee  
19 disbursed \$3,122.97 to November Inc. for "copier rentals").

20 Based on the available information, November Inc. did not extend credit to the  
21 Committee in the ordinary course of business and on substantially similar terms as those of  
22 nonpolitical clients of similar risk and size of obligation. *See* 11 C.F.R. § 100.55; 11 C.F.R.  
23 § 116.3(b). November Inc. did not respond to the complaint or provide information

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1 demonstrating that it followed its established procedures and past practice, that it previously  
2 extended credit to the Committee and received prompt payment in full, or that the extension of  
3 credit conformed to the usual and normal practice in its trade or industry. *See* 11 C.F.R.  
4 § 116.3(c). As a result, we have no information regarding November Inc.'s collection policies  
5 and practices, advance payment policies, or billing cycles for nonpolitical debtors, and we lack  
6 information regarding the terms of the transaction in this case. *See id.* It is questionable,  
7 however, whether a corporation with an estimated \$100,000 in annual sales, *see supra* pp. 6-7,  
8 could extend credit in excess of \$100,000 for more than two years in the ordinary course of  
9 business.

10 Similarly, November Inc. provided no information demonstrating that it has acted in a  
11 commercially reasonable manner in attempting to collect the debt owed by the Committee. *See*  
12 11 C.F.R. § 100.55. As of the date of this report, the Committee has still not paid November Inc.  
13 in full. Although the Committee states in its response that it has paid \$8,400 toward the total  
14 debt owed to the vendor, \$108,356.60 remains outstanding. Moreover, the debt owed by the  
15 Committee has been continuously outstanding for at least two years. Thus, we recommend that  
16 the Commission find reason to believe that November Inc. made a prohibited corporate  
17 contribution, in violation of 2 U.S.C. § 441b(a).<sup>3</sup>

18 **B. Foundations, Inc. (n/k/a In Compliance Inc.)**

19 Foundations, which changed its name to In Compliance Inc. in 2007, is a registered  
20 corporation in Nevada and appears to be a commercial vendor under the Commission's  
21 regulations. *See* 11 C.F.R. § 116.1(c); *see also* Foundations Response at 1. The company's Dun  
22 and Bradstreet report states that Foundations provides "business services" with annual sales of

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<sup>3</sup> The discussion and recommendations for the Committee are discussed *infra* Part III.E.

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1 \$160,000, and it appears to provide consulting services to Nevada campaigns.<sup>4</sup> The debt owed  
2 by the Committee to Foundations is listed as consulting, treasury, and software support services,  
3 as well as printing and postage expenses. *See* Schedule D, 2007 April Quarterly Report.

4 It appears that Foundations extended credit to the Committee because it did not require  
5 full payment until after it rendered services to the Committee. *See* 11 C.F.R. § 116.1(e)(1); *see*  
6 *also* Attachment A. For at least two years, the Committee has owed Foundations \$19,500. *See*  
7 Attachment A. On its 2006 October Quarterly, the Committee reported a debt of \$13,048.27 to  
8 Foundations, and this debt increased to \$29,131.61 in the Committee's 2006 Post-General  
9 Report. *See id.* This amount fell to \$19,500 on the Committee's 2007 October Quarterly Report,  
10 and has remained unchanged through the date of the writing of this report. *Id.*

11 Based on the available information, Foundations did not extend credit to the Committee  
12 in the ordinary course of business and on substantially similar terms as those of nonpolitical  
13 clients of similar risk and size of obligation. *See* 11 C.F.R. § 100.55; 11 C.F.R. § 116.3(b).  
14 Although the Committee's response states that Chrissie Hastie, its former treasurer, was the  
15 owner and operator of Foundations and asserts that Hastie "has treated the Committee as she has  
16 all of her other clients" and has allowed it to address debt over time "as part of the normal and  
17 usual business practice of Foundation, Inc.," it does not provide examples of the company's  
18 normal and usual business practices or offer information to support this contention. *See*  
19 Committee Response at 2. Although Foundations responded to the complaint, it did not provide  
20 information demonstrating that it followed its established procedures and past practice, that it  
21 previously extended credit to the Committee and received prompt payment in full, or that the

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<sup>4</sup> *See, e.g.,* Henderson City Council Campaign Contribution and Expense Report, at [http://www.cityofhenderson.com/city\\_clerk/municipal\\_elections/Historical\\_Info/pdf/2007/CCE%201/03-27-2007\\_CCE\\_THOMAS\\_WAGNER.pdf](http://www.cityofhenderson.com/city_clerk/municipal_elections/Historical_Info/pdf/2007/CCE%201/03-27-2007_CCE_THOMAS_WAGNER.pdf) (Mar. 27, 2007).

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1 extension of credit conformed to the usual and normal practice in its trade or industry. *See*  
2 11 C.F.R. § 116.3(c). As a result, we have no information regarding its collection policies and  
3 practices, advance payment policies, or billing cycles for nonpolitical debtors, and we lack  
4 information regarding the terms of the transaction in this case. Moreover, as with the other  
5 vendors used by the Committee, it is questionable whether a corporation with an estimated  
6 \$160,000 in annual sales could extend almost \$20,000 in credit for more than two years in the  
7 ordinary course of business.

8 Similarly, Foundations provided no information demonstrating that it has acted in a  
9 commercially reasonable manner in attempting to collect the debt owed by the Committee. As  
10 of the date of this report, the Committee has still not paid Foundations in full, and its debt has  
11 been continuously outstanding for at least two years. Although the Committee made  
12 disbursements to In Compliance Inc. after Foundations changed its name in 2007, *see, e.g.*, 2008  
13 October Quarterly Report (Committee disbursed \$3,870 to In Compliance Inc. for "consulting  
14 and treasury" services), it appears that it made those payments in connection with new services  
15 provided to the Committee because the original debt owed to Foundations has remained  
16 unchanged since 2007. *See* Schedule B, 2008 Year-End Report. As a result, we recommend that  
17 the Commission find reason to believe that Foundations made a prohibited corporate  
18 contribution to the Committee in violation of 2 U.S.C. § 441b(a).

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**C. Autumn Productions**

As a company that "offers photography and graphic design services, with video for international and domestic network and cable TV systems," Autumn Productions appears to be a commercial vendor under the Commission's regulations.<sup>5</sup> 11 C.F.R. § 116.1(c). The Committee lists its debt to Autumn Productions as consulting and management services. *See* Schedule D, 2008 Post-General Report. Because the company is not currently registered as a corporation or other business entity in Nevada, it is unclear at this time whether Autumn Productions would be treated as a partnership or corporation for purposes of the Act. If treated as a partnership, it is possible that Autumn Productions made an excessive contribution to the Committee in violation of 2 U.S.C. § 441a(a)(1). However, as a corporation, Autumn Productions would have made a prohibited contribution in violation of 2 U.S.C. § 441b(a).

It appears that Autumn Productions extended credit to the Committee because it did not require full payment until after it rendered services to the Committee. *See* 11 C.F.R. § 116.1(e)(1); *see also* Attachment A. The Committee has been in debt to Autumn Productions from mid-2006 until the present, with an average balance of \$131,823. *See* Attachment A. The Committee initially listed debt to Autumn Productions in the amount of \$66,000 in its 2006 October Quarterly Report. The Committee's debt then increased to \$76,000 the next reporting period, and to \$146,000 the following reporting period. *Id.* This amount remained outstanding at least 390 days, until the Committee paid down the debt to \$137,050 sometime between January 1, 2008 and March 31, 2008. The Committee's debt to Autumn Productions has remained at \$137,050 through the date of the writing of this report.

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<sup>5</sup> *See* Desert Beacon, <http://desertbeacon.blogspot.com/2008/05/rep-hellers-intriguing-campaign-debts.html> (May 07, 2008, 23:06 EST).

1       Based on the available information, Autumn Productions did not extend credit to the  
2 Committee in the ordinary course of business and on substantially similar terms as those of  
3 nonpolitical clients of similar risk and size of obligation. See 11 C.F.R. § 100.55; 11 C.F.R.  
4 § 116.3(b). Autumn Productions did not respond to the complaint or provide information  
5 demonstrating that it followed its established procedures and past practice, that it previously  
6 extended credit to the Committee and received prompt payment in full, or that the extension of  
7 credit conformed to the usual and normal practice in its trade or industry. See 11 C.F.R.  
8 § 116.3(c). As a result, we have no information regarding its collection policies and practices,  
9 advance payment policies, or billing cycles for nonpolitical debtors, and we lack information  
10 regarding the terms of the transaction in this case. As with November Inc., however, it is  
11 questionable whether a small, apparently unregistered vendor could extend credit in excess of  
12 \$100,000 for more than two years in the ordinary course of business.

13       Similarly, Autumn Productions provided no information demonstrating that it has acted  
14 in a commercially reasonable manner in attempting to collect the debt owed by the Committee.  
15 As of the date of this report, the Committee has still not paid Autumn Productions in full, and  
16 this debt owed by the Committee has been continuously outstanding for at least two years.  
17 Thus, we recommend that the Commission find reason to believe that Autumn Productions made  
18 an excessive or prohibited corporate contribution, in violation of 2 U.S.C. §§ 441a(a)(1) or  
19 441b(a).

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**D. NI Operations**

As a rental company that provides services to political candidates,<sup>6</sup> it appears that NI Operations is a commercial vendor under the Commission's regulations. See 11 C.F.R. § 116.1(c). Similar to Autumn Productions, however, NI Operations is not currently registered as a corporation or other business entity in Nevada, and it is unclear whether NI Operations would be treated as a partnership or corporation for purposes of the Act. If treated as a corporation, NI Operations would have made a prohibited contribution in violation of 2 U.S.C. § 441b(a). As a partnership, however, NI Operations would not have made an excessive contribution to the Committee in violation of 2 U.S.C. § 441a(a)(1), because the maximum amount of credit NI Operations extended to the Committee was \$1,200.

It appears that NI Operations extended credit to the Committee because it did not require full payment until after it rendered services to the Committee. See 11 C.F.R. § 116.1(e)(1); see also Attachment A. According to reports filed with the Commission, it appears the most the Committee owed NI Operations at any point in time was \$1,200. See Attachment A. The Committee owed NI Operations \$600 for rent for more than a year and a half, from late 2006 until October 31, 2008. *Id.* On that date, the Committee paid NI Operations \$500, and the Committee thereafter extinguished its debt to NI Operations on November 24, 2008, when it paid the company \$100. *Id.*

Based on the available information, NI Operations may not have extended credit to the Committee in the ordinary course of business and on substantially similar terms as those of nonpolitical clients of similar risk and size of obligation. See 11 C.F.R. § 100.55; 11 C.F.R.

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<sup>6</sup> See Schedule D, 2008 Pre-General Election Report (Committee lists its debt to NI Operations as "rent"); see also 2007-2008 Expenditures by Congressman Jon Porter,

1 § 116.3(b). NI Operations did not respond to the complaint or provide information  
2 demonstrating that it followed its established procedures and past practice, that it previously  
3 extended credit to the Committee and received prompt payment in full, or that the extension of  
4 credit conformed to the usual and normal practice in its trade or industry. *See* 11 C.F.R.

5 § 116.3(c). As a result, we have no information regarding its collection policies and practices,  
6 advance payment policies, or billing cycles for nonpolitical debtors, and we lack information  
7 regarding the terms of the transaction in this case. Moreover, the debt owed by the Committee  
8 was outstanding for at a year and a half, and we have no information to show that NI Operations  
9 has acted in a commercially reasonable manner in attempting to collect it.

10 Nevertheless, as noted above, it is unclear whether NI Operations is a corporation,  
11 partnership, or other business entity. The company is not registered as a corporation, LLP, or  
12 LLC in Nevada, and a Westlaw search did not reveal registration in any other state. Thus, it is  
13 unlikely that NI Operations is subject to the prohibition on corporate contributions. If NI  
14 Operations is a partnership, its extension of credit would not be an excessive contribution unless  
15 the partners' portion of the \$1,200, together with any individual contributions, exceeded the  
16 Act's limits. *See* 11 C.F.R. § 110.1(e). However, we have no information that any individual  
17 associated with NI Operations made excessive contributions to the Committee in this matter.  
18 Therefore, we recommend that the Commission find no reason to believe that NI Operations  
19 made an excessive contribution in violation of 2 U.S.C. §§ 441a(a)(1).

**E. Heller for Congress and Elisabeth Ballinger, in Her Official Capacity as Treasurer**

As discussed above, extensions of credit by a commercial vendor to a candidate's committee are contributions to that committee if the commercial vendor did not extend credit in the ordinary course of business with terms that are substantially similar to extensions of credit to nonpolitical debtors of similar risk and size of obligation. The Committee argues that the debts owed to November Inc., Autumn Productions, Foundations, and NI Operations are not extensions of credit because the debts owed are not the result of any agreement between the Committee and its creditors "with respect to the payment of invoices." *See* Committee Response at 2. However, the Commission's regulations do not limit extensions of credit to agreements pertaining to invoices or to written agreement between parties. *See* 11 C.F.R. § 116.1(c). The Commission's regulations only require an agreement between the parties that full payment is not due until after the goods or services are provided. 11 C.F.R. § 116.1(e)(1); *see also* Explanation and Justification of Regulations on Debts Owed by Candidates and Political Committees, 55 Fed. Reg. 26,378 (Oct. 3, 1990) (an extension of credit occurs where a creditor decides in advance to provide goods or services on credit or decides on or after the due date to allow more time for payment). Here, the Committee has continued to report debt to the aforementioned companies, despite having received goods or services several years ago. It also appears these companies decided on or after the due date to allow more time for payment. Therefore, as discussed above, November Inc., Autumn Productions, Foundations, and NI Operations did in fact provide extensions of credit to the Committee.

Also, as discussed above, it appears that these vendors did not extend credit to the Committee in the ordinary course of business. *See* 11 C.F.R. § 100.55. The Committee's debts

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1 owed to the vendors remained outstanding for more than two years, and there is no information  
2 to show that the companies attempted to recover the debts in a commercially reasonable manner.

3 *Id.* In response to the Complaint, the Committee asserts that these vendors billed it in the  
4 ordinary course of business, but it did not produce any information to support this claim. The  
5 Commission previously has found reason to believe that respondents violated the Act where a  
6 respondent asserts that credit was extended in the ordinary course of business but does not  
7 provide any information to substantiate its assertion. *See, e.g.*, MUR 4803 (Tierney for  
8 Congress), John Tierney for Congress Committee and Tierney for Congress Factual and Legal  
9 Analysis.

10 The Committee also responded by stating that it is paying current invoices and making  
11 payments toward past due invoices; it is working with the businesses identified in the complaint  
12 to resolve debt, and has paid \$8,400 toward the total debt owed to November Inc. and \$600 to NI  
13 Operations; and it is taking steps to address its cash management situation by seeking new  
14 contributions and redesignation of previous contributions toward debt retirement. Committee  
15 Response at 2. However, the Committee provided no information about repayment arrangements  
16 with the identified vendors or the vendors' attempts to collect the money owed, beyond  
17 conclusory statements that allowing these types of delays in payment (and payment of new  
18 invoices first, in the case of Foundations) is normal business practice. In fact, the Committee  
19 asserts that there has been no agreement with the vendors.

20 The Committee further asserts that it is not unusual for candidate committees to take  
21 some time to address debt to vendors, referencing the reported debts owed by Hillary Clinton for  
22 President in 2008 and Friends of John Glenn in 2005. The debts reported by these committees,  
23 however, are inapposite to this matter. Although Hillary Clinton for President reported a debt of

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1 \$25 million in its July 2008 Monthly Report, it has since made monthly payments on its  
2 obligations and has consistently paid down this debt, reporting \$5.9 million in debts and  
3 obligations on its 2008 Year End Report. Likewise, Friends of John Glenn and former Senator  
4 John Glenn made significant efforts to extinguish approximately \$2.6 million in outstanding  
5 debts to banks and vendors from his failed 1984 Presidential run.<sup>7</sup>

6 Conversely, the Committee in this matter has not made the same attempts to pay down its  
7 debts to November Inc., Autumn Productions, Foundations, and NI Operations. While the  
8 Committee made disbursements to November Inc. and NI Operations in October and November  
9 2008, this came only after a complaint was filed, and previously the Committee had infrequently  
10 disbursed funds to the respondents. See Attachment A. For more than a year, the Committee  
11 reported cash on hand totals that were significantly greater than the amount of debt owed to  
12 November Inc., Autumn Productions, Foundations, and NI Operations. See 2008 Pre-Primary  
13 Report (Committee reported \$1,006,659.05 cash on hand, while owing a combined total of  
14 \$273,906.60 to November Inc., Autumn Productions, Foundations, and NI Operations). In  
15 addition, the Committee has consistently paid off its debts to other vendors.<sup>8</sup> For instance, the

<sup>7</sup> The majority of the money owed consisted of unsecured loans made by four banks. See Katherine Rizzo, *When He Returns, Glenn Still Faces \$3 Million Campaign Debt*, ASSOC. PRESS, Nov. 6, 1998; see also John Glenn's Failed Presidential Campaign Still Owes Millions, ASSOC. PRESS, Feb. 9, 2004. In 1987, the Commission allowed Glenn to transfer \$800,000 in excess funds from his 1986 Senate Committee to Friends of John Glenn to reduce the debt. See AO 1987-4. In 1993, the Commission determined that Glenn could use his personal funds to pay down the debt, and Glenn subsequently used \$450,000 to pay back several individuals and businesses. See AO 1993-19. In 1997, the Commission denied a request by Friends of John Glenn to pay back the original \$2 million in loans and waive the \$1.2 million interest that had accrued. Subsequently, in 1998, the committee made another payment of \$500,000 to decrease the debt. Friends of John Glenn was administratively terminated by the FEC in 2005 soon after it filed its 2005 Year End Report, in part because the vendors and banks who were owed debts by the committee were barred from attempting to collect the debts because of the expiration of the statute of limitations, and the committee had not made disbursements or received contributions and had \$50.34 on hand. See *John Glenn's Failed Presidential Campaign Still Owes Millions*, *supra*.

<sup>8</sup> The Committee also appears to have had longstanding debts to two other entities. While the Complaint names November Inc., Autumn, Foundations, and NI Operations as entities that have been owed debts by the Committee for long periods of time, two other entities, Weeks & Company and R & R Partners, are owed debts that remained outstanding. See Schedule D FEC Filings. The Committee first reported a debt to Weeks and Company in its 2006

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1 Committee reported a debt of \$20,931.70 to Kummer Kaempfer Bonner, a law firm, in its April  
2 2007 Quarterly Report. The Committee then paid down this debt by \$3,000 each quarter, until  
3 the Committee reported a debt of \$0.00 to the law firm on its 2008 Year End Report.

4 Therefore, we recommend that the Commission find reason to believe that Heller for  
5 Congress and Elisabeth Ballinger, in her official capacity as treasurer, violated 2 U.S.C.  
6 § 441b(a) by knowingly receiving prohibited corporate contributions from November Inc.,  
7 Autumn Productions, and Foundations, and violated 2 U.S.C. §§ 441a(f) or 441b(a) by  
8 knowingly accepting excessive or prohibited contributions from Autumn Productions. As  
9 discussed above, NI Operations does not appear to have made an excessive or prohibited  
10 contribution, and therefore the Committee did not knowingly receive an excessive or prohibited  
11 contribution from NI Operations.

12 **IV. INVESTIGATION**

13 We propose an investigation to determine whether the vendors made extensions of credit  
14 in the normal course of business.

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Pre-General Election Report for \$25,000, and in its 2008 Year End Report the Committee reported a debt to Weeks and Company in the amount of \$27,000. The Committee first reported a debt to R & R Partners in its 2006 Pre-Primary Report in the amount of \$7,896.55, and reported a debt to R & R Partners on its 2008 Year-End Report in the amount of \$7,333.99.

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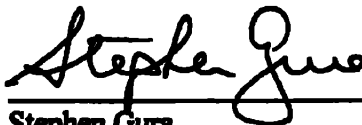
**V. RECOMMENDATIONS**

1. Find reason to believe that November Inc. violated 2 U.S.C. § 441b(a);
2. Find reason to believe that Foundations Inc. violated 2 U.S.C. § 441b(a);
3. Find reason to believe that Autumn Productions violated 2 U.S.C. §§ 441a(a)(1) or 441b(a);
4. Find no reason to believe that NI Operations violated 2 U.S.C. § 441a(a)(1);
5. Find reason to believe that Heller for Congress and Elisabeth Ballinger, in her official capacity as treasurer, violated 2 U.S.C. §§ 441a(f) or 441b(a);
6. Approve the attached Factual and Legal Analyses;
7. Authorize compulsory process; and

8. Approve the appropriate letters.

Date

BY:



Stephen Gura

Deputy Associate General Counsel for Enforcement



Julie McConnell

Assistant General Counsel



Joshua B. Smith

Attorney

Previously assigned: Ana Pena-Wallace

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